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SENATE BILL 245

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben D. Altamirano

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; ELIMINATING THE AVAILABILITY OF LIMITED DRIVER'S
LICENSES FOR CERTAIN OFFENDERS; INCREASING THE MINIMUM
MANDATORY SENTENCE FOR A SECOND OFFENSE; AMENDING SECTIONS OF
THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-35 NMSA 1978 (being Laws 1978,
Chapter 35, Section 257, as amended by Laws 2001, Chapter 47,
Section 1 and also by Laws 2001, Chapter 242, Section 1) is
amended to read:

"66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR
REVOCATION-- HEARING-- REVIEW. --

A. Upon suspension or revocation of a person's
driver's license following conviction or adjudication as a

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1 delinquent under any law, ordinance or rule relating to motor
2 vehicles, a person may apply to the department for a license or
3 permit to drive, limited to use allowing him to engage in
4 gainful employment, to attend school or to attend a court-
5 ordered treatment program, except that the person shall not be
6 eligible to apply:

7 (1) for a limited commercial driver's license;

8 (2) for a limited license when the person's
9 driver's license was revoked pursuant to the provisions of the
10 Implied Consent Act, except as provided in Subsection B of this
11 section;

12 (3) for a limited license when the person's
13 license was revoked pursuant to an offense for which the person
14 is a subsequent offender [~~as defined in the Motor Vehicle Code,~~
15 ~~except that a person who is convicted a second or third time~~
16 ~~for driving under the influence of intoxicating liquor or drugs~~
17 ~~may apply for and shall receive a limited license if he~~
18 ~~complies with the requirements set forth in Subsections C and D~~
19 ~~of this section]; or~~

20 (4) for a limited license when the person's
21 driver's license was revoked pursuant to a conviction for
22 committing homicide by vehicle or great bodily injury by
23 vehicle, as provided in Section 66-8-101 NMSA 1978.

24 B. A person whose driver's license is revoked for
25 the first time pursuant to the provisions of Paragraph (1) or

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1 (2) of Subsection C of Section 66-8-111 NMSA 1978 [~~or for the~~
2 ~~second or third time pursuant to the provisions of Paragraph~~
3 ~~(3) of Subsection C of Section 66-8-111 NMSA 1978~~] may apply
4 for and shall receive a limited license or permit thirty days
5 after suspension or revocation of his license if the person
6 pays every fee, meets the criteria for limited driving
7 privileges established in rules by the department and provides
8 the department with documentation of the following:

9 (1) that the person is enrolled in a DWI
10 school approved by the [~~traffic safety~~] bureau and an approved
11 alcohol screening program;

12 (2) proof of financial responsibility pursuant
13 to the provisions of the Mandatory Financial Responsibility
14 Act; and

15 [~~(3) if the person's driver's license is~~
16 ~~revoked pursuant to the provisions of Paragraph (3) of~~
17 ~~Subsection C of Section 66-8-111 NMSA 1978, proof that each~~
18 ~~motor vehicle to be operated by the person, if he receives a~~
19 ~~limited license, shall be equipped with an ignition interlock~~
20 ~~device installed and operated pursuant to rules adopted by the~~
21 ~~traffic safety bureau; and~~

22 (a) (3) proof of gainful employment or
23 gainful self-employment and that the person needs a limited
24 license to travel to and from his place of employment; or

25 [(b)] (4) proof that the person is enrolled in

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1 school and needs a limited license to travel to and from
2 school; or

3 [~~(c)~~] (5) proof that the person is enrolled in
4 a court-ordered treatment program and needs a limited license
5 to travel to and from the treatment program.

6 [~~C. A person who is convicted a second or third~~
7 ~~time for driving under the influence of intoxicating liquor or~~
8 ~~drugs may apply for and shall receive a limited license thirty~~
9 ~~days after suspension or revocation of his license if the~~
10 ~~person pays every fee, meets the criteria for limited driving~~
11 ~~privileges established in rule by the department and provides~~
12 ~~the department with documented proof:-~~

13 ~~(1) of enrollment in a DWI school approved by~~
14 ~~the traffic safety bureau and an approved alcohol screening~~
15 ~~program;~~

16 ~~(2) of financial responsibility pursuant to~~
17 ~~the provisions of the Mandatory Financial Responsibility Act;~~
18 ~~and~~

19 ~~(3) of gainful employment or gainful self-~~
20 ~~employment and that the person needs a limited license to~~
21 ~~travel to and from his place of employment; or~~

22 ~~(4) of enrollment in school and that the~~
23 ~~person needs a limited license to travel to and from school; or~~

24 ~~(5) of enrollment in a court-ordered treatment~~
25 ~~program and that the person needs limited license to travel to~~

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1 ~~and from the treatment program.~~

2 ~~D. In addition to the requirements set forth in~~
3 ~~Subsection C of this section, a person who is convicted a~~
4 ~~second or third time for driving under the influence of~~
5 ~~intoxicating liquor or drugs shall provide the department with~~
6 ~~his judgment and sentence. The judgment and sentence shall~~
7 ~~attest that the person will be on probation for the entire~~
8 ~~period that a limited license will be in effect and that, as a~~
9 ~~condition of probation, the person shall provide proof that~~
10 ~~each motor vehicle to be operated by the person is equipped~~
11 ~~with an ignition interlock device installed and operated~~
12 ~~pursuant to rules adopted by the traffic safety bureau. The~~
13 ~~ignition interlock device shall be installed on the appropriate~~
14 ~~motor vehicle at the person's expense.~~

15 ~~E.]~~ C. Upon receipt of a fully completed
16 application that complies with statutes and rules for a limited
17 license and payment of the fee specified in this subsection,
18 the department shall issue a limited license or permit to the
19 applicant showing the limitations specified in the approved
20 application. For each limited license or permit to drive, the
21 applicant shall pay to the department a fee of forty-five
22 dollars (\$45.00), which shall be transferred to the state
23 highway and transportation department. All money collected
24 under this subsection shall be used for DWI prevention and
25 education programs for elementary and secondary school

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1 students. The state highway and transportation department
2 shall coordinate with the department of health to ensure that
3 there is no program duplication. The limited license or permit
4 to drive may be suspended as provided in Section 66-5-30 NMSA
5 1978.

6 ~~[F-]~~ D. The department, within twenty days of
7 denial of an application for a limited driver's license or
8 permit pursuant to this section, shall afford the applicant a
9 hearing in the county in which the applicant resides, unless
10 the department and the licensee agree that the hearing may be
11 held in some other county. The department may extend the
12 twenty-day period, provided that the extension is in writing
13 and made no later than fifteen days after receipt of an
14 application. Upon hearing, the hearing officer designated by
15 the department may administer oaths and may issue subpoenas for
16 the attendance of witnesses and the production of relevant
17 books and papers. The hearing officer shall make specific
18 findings as to whether the applicant has shown proof of
19 financial responsibility for the future and enrollment in an
20 approved DWI school and an approved alcohol screening program
21 and meets established uniform criteria for limited driving
22 privileges adopted by rule of the department. The hearing
23 officer shall enter an order either approving or denying the
24 applicant's request for a limited license or permit to drive.
25 If any of the specific findings set forth in this subsection

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1 are not found by the hearing officer, the applicant's request
2 for a limited license or permit shall not be approved.

3 ~~[G-]~~ E. A person adversely affected by an order of
4 the hearing officer may seek review within thirty days in the
5 district court in the county in which he resides. On review,
6 it is for the court to determine only whether the applicant met
7 the requirements in this section for issuance of a limited
8 license or permit to drive. "

9 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
10 Chapter 139, Section 54, as amended) is amended to read:

11 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
12 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
13 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

14 A. It is unlawful for a person who is under the
15 influence of intoxicating liquor to drive a vehicle within this
16 state.

17 B. It is unlawful for a person who is under the
18 influence of any drug to a degree that renders him incapable of
19 safely driving a vehicle to drive a vehicle within this state.

20 C. It is unlawful for a person who has an alcohol
21 concentration of eight one hundredths or more in his blood or
22 breath to drive a vehicle within this state.

23 D. Aggravated driving while under the influence of
24 intoxicating liquor or drugs consists of a person who:

25 (1) has an alcohol concentration of sixteen

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1 one hundredths or more in his blood or breath while driving a
2 vehicle within this state;

3 (2) has caused bodily injury to a human being
4 as a result of the unlawful operation of a motor vehicle while
5 driving under the influence of intoxicating liquor or drugs; or

6 (3) refused to submit to chemical testing, as
7 provided for in the Implied Consent Act, and in the judgment of
8 the court, based upon evidence of intoxication presented to the
9 court, was under the influence of intoxicating liquor or drugs.

10 E. ~~Every~~ A person under first conviction pursuant
11 to this section shall be punished, notwithstanding the
12 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
13 not more than ninety days or by a fine of not more than five
14 hundred dollars (\$500), or both; provided that if the sentence
15 is suspended in whole or in part or deferred, the period of
16 probation may extend beyond ninety days but shall not exceed
17 one year. Upon a first conviction pursuant to this section, an
18 offender may be sentenced to not less than forty-eight hours of
19 community service or a fine of three hundred dollars (\$300).
20 The offender shall be ordered by the court to participate in
21 and complete a screening program described in Subsection H of
22 this section and to attend a driver rehabilitation program for
23 alcohol or drugs, also known as a "DWI school", approved by the
24 bureau and also may be required to participate in other
25 rehabilitative services as the court shall determine to be

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1 necessary. In addition to those penalties, when an offender
2 commits aggravated driving while under the influence of
3 intoxicating liquor or drugs, the offender shall be sentenced
4 to not less than forty-eight consecutive hours in jail. If an
5 offender fails to complete, within a time specified by the
6 court, any community service, screening program, treatment
7 program or DWI school ordered by the court, the offender shall
8 be sentenced to not less than an additional forty-eight
9 consecutive hours in jail. Any jail sentence imposed pursuant
10 to this subsection for failure to complete, within a time
11 specified by the court, any community service, screening
12 program, treatment program or DWI school ordered by the court
13 or for aggravated driving while under the influence of
14 intoxicating liquor or drugs shall not be suspended, deferred
15 or taken under advisement. On a first conviction pursuant to
16 this section, any time spent in jail for the offense prior to
17 the conviction for that offense shall be credited to any term
18 of imprisonment fixed by the court. A deferred sentence
19 pursuant to this subsection shall be considered a first
20 conviction for the purpose of determining subsequent
21 convictions.

22 F. A second or third conviction pursuant to this
23 section shall be punished, notwithstanding the provisions of
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than
25 three hundred sixty-four days or by a fine of not more than one

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1 thousand dollars (\$1,000), or both; provided that if the
2 sentence is suspended in whole or in part, the period of
3 probation may extend beyond one year but shall not exceed five
4 years. Notwithstanding any provision of law to the contrary
5 for suspension or deferment of execution of a sentence:

6 (1) upon a second conviction, [~~each~~] an
7 offender shall be sentenced to a jail term of not less than
8 [~~seventy-two consecutive hours~~] five consecutive days, forty-
9 eight hours of community service and a fine of five hundred
10 dollars (\$500). In addition to those penalties, when an
11 offender commits aggravated driving while under the influence
12 of intoxicating liquor or drugs, the offender shall be
13 sentenced to a jail term of not less than ninety-six
14 consecutive hours. If an offender fails to complete, within a
15 time specified by the court, any community service, screening
16 program or treatment program ordered by the court, the offender
17 shall be sentenced to not less than an additional seven
18 consecutive days in jail. A penalty imposed pursuant to this
19 paragraph shall not be suspended or deferred or taken under
20 advisement; and

21 (2) upon a third conviction, an offender shall
22 be sentenced to a jail term of not less than thirty consecutive
23 days and a fine of seven hundred fifty dollars (\$750). In
24 addition to those penalties, when an offender commits
25 aggravated driving while under the influence of intoxicating

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1 liquor or drugs, the offender shall be sentenced to a jail term
2 of not less than sixty consecutive days. If an offender fails
3 to complete, within a time specified by the court, any
4 screening program or treatment program ordered by the court,
5 the offender shall be sentenced to not less than an additional
6 sixty consecutive days in jail. A penalty imposed pursuant to
7 this paragraph shall not be suspended or deferred or taken
8 under advisement.

9 G. Upon a fourth or subsequent conviction pursuant
10 to this section, an offender is guilty of a fourth degree
11 felony, as provided in Section 31-18-15 NMSA 1978, and shall be
12 sentenced to a jail term of not less than six months, which
13 shall not be suspended or deferred or taken under advisement.

14 H. Upon any conviction pursuant to this section, an
15 offender shall be required to participate in and complete,
16 within a time specified by the court, an alcohol or drug abuse
17 screening program and, if necessary, a treatment program
18 approved by the court. The requirement imposed pursuant to
19 this subsection shall not be suspended, deferred or taken under
20 advisement.

21 I. Upon a first conviction for aggravated driving
22 while under the influence of intoxicating liquor or drugs
23 pursuant to the provisions of Subsection D of this section,
24 as a condition of probation, an offender shall be required to
25 have an ignition interlock device installed and operating for a

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1 period of one year on all motor vehicles driven by the
2 offender, pursuant to rules adopted by the bureau. Unless
3 determined by the sentencing court to be indigent, the offender
4 shall pay all costs associated with having an ignition
5 interlock device installed on the appropriate motor vehicles.
6 If an offender drives a motor vehicle that does not have an
7 ignition interlock device installed on the motor vehicle, the
8 offender may be in violation of the terms and conditions of his
9 probation.

10 J. Upon a first conviction for driving while under
11 the influence of intoxicating liquor or drugs pursuant to the
12 provisions of Subsection A, B or C of this section, as a
13 condition of probation, an offender may be required to have an
14 ignition interlock device installed and operating for a period
15 of one year on all motor vehicles driven by the offender,
16 pursuant to rules adopted by the bureau. Unless determined by
17 the sentencing court to be indigent, the offender shall pay all
18 costs associated with having an ignition interlock device
19 installed on the appropriate motor vehicles. If an offender
20 drives a motor vehicle that does not have an ignition interlock
21 device installed on the motor vehicle, the offender may be in
22 violation of the terms and conditions of his probation.

23 K. Upon any subsequent conviction pursuant to this
24 section, as a condition of probation, a subsequent offender
25 shall be required to have an ignition interlock device

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1 installed and operating for a period of at least one year on
2 all motor vehicles driven by the subsequent offender, pursuant
3 to rules adopted by the bureau. Unless determined by the
4 sentencing court to be indigent, the subsequent offender shall
5 pay all costs associated with having an ignition interlock
6 device installed on the appropriate motor vehicles. If a
7 subsequent offender drives a motor vehicle that does not have
8 an ignition interlock device installed on the motor vehicle,
9 the subsequent offender may be in violation of the terms and
10 conditions of his probation.

11 L. In the case of a first, second or third offense
12 under this section, the magistrate court has concurrent
13 jurisdiction with district courts to try the offender.

14 M A conviction pursuant to a municipal or county
15 ordinance in New Mexico or a law of any other jurisdiction,
16 territory or possession of the United States that is equivalent
17 to New Mexico law for driving while under the influence of
18 intoxicating liquor or drugs, and that prescribes penalties for
19 driving while under the influence of intoxicating liquor or
20 drugs, shall be deemed to be a conviction pursuant to this
21 section for purposes of determining whether a conviction is a
22 second or subsequent conviction.

23 N. In addition to any other fine or fee ~~which~~
24 that may be imposed pursuant to the conviction or other
25 disposition of the offense under this section, the court may

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1 order the offender to pay the costs of any court-ordered
2 screening and treatment programs.

3 0. As used in this section:

4 (1) "bodily injury" means an injury to a
5 person that is not likely to cause death or great bodily harm
6 to the person, but does cause painful temporary disfigurement
7 or temporary loss or impairment of the functions of any member
8 or organ of the person's body; and

9 (2) "conviction" means an adjudication of
10 guilt and does not include imposition of a sentence. "

11 Section 3. Section 66-8-111 NMSA 1978 (being Laws 1978,
12 Chapter 35, Section 519, as amended) is amended to read:

13 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
14 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE. --

15 A. If a person under arrest for violation of an
16 offense enumerated in the Motor Vehicle Code refuses upon
17 request of a law enforcement officer to submit to chemical
18 tests designated by the law enforcement agency as provided in
19 Section 66-8-107 NMSA 1978, none shall be administered except
20 when a municipal judge, magistrate or district judge issues a
21 search warrant authorizing chemical tests as provided in
22 Section 66-8-107 NMSA 1978 upon his finding in a law
23 enforcement officer's written affidavit that there is probable
24 cause to believe that the person has driven a motor vehicle
25 while under the influence of alcohol or a controlled substance,

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1 thereby causing the death or great bodily injury of another
2 person, or there is probable cause to believe that the person
3 has committed a felony while under the influence of alcohol or
4 a controlled substance and that chemical tests as provided in
5 Section 66-8-107 NMSA 1978 will produce material evidence in a
6 felony prosecution.

7 B. The department, upon receipt of a statement
8 signed under penalty of perjury from a law enforcement officer
9 stating the officer's reasonable grounds to believe the
10 arrested person had been driving a motor vehicle within this
11 state while under the influence of intoxicating liquor or
12 [~~drug~~] drugs and that, upon his request, the person refused to
13 submit to a chemical test after being advised that failure to
14 submit could result in revocation of his privilege to drive,
15 shall revoke the person's New Mexico driver's license or any
16 nonresident operating privilege for a period of one year or
17 until all conditions for license reinstatement are met,
18 whichever is later.

19 C. The department, upon receipt of a statement
20 signed under penalty of perjury from a law enforcement officer
21 stating the officer's reasonable grounds to believe the
22 arrested person had been driving a motor vehicle within this
23 state while under the influence of intoxicating liquor and that
24 the person submitted to chemical testing pursuant to Section
25 66-8-107 NMSA 1978 and the test results indicated an alcohol

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1 concentration of eight one hundredths or more in the person's
2 blood or breath if the person is twenty-one years of age or
3 older or an alcohol concentration of two one hundredths or more
4 in the person's blood or breath if the person is less than
5 twenty-one years of age, shall revoke the person's license or
6 permit to drive or his nonresident operating privilege for a
7 period of:

8 (1) ninety days or until all conditions for
9 license reinstatement are met, whichever is later, if the
10 person is twenty-one years of age or older;

11 (2) six months or until all conditions for
12 license reinstatement are met, whichever is later, if the
13 person is less than twenty-one years of age and has not
14 previously had his license revoked pursuant to the provisions
15 of this section, notwithstanding any provision of the
16 Children's Code; or

17 (3) one year [~~or until all conditions for~~
18 ~~license reinstatement are met, whichever is later~~] if the
19 person has previously had his license revoked pursuant to the
20 provisions of this section, notwithstanding the provisions of
21 Paragraph (1) or (2) of this subsection or any provision of the
22 Children's Code.

23 D. The determination of alcohol concentration shall
24 be based on the grams of alcohol in one hundred milliliters of
25 blood or the grams of alcohol in two hundred ten liters of

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1 breath.

2 E. If the person subject to the revocation
3 provisions of this section is a resident or will become a
4 resident within one year and is without a license to operate a
5 motor vehicle in this state, the department shall deny the
6 issuance of a license to him for the appropriate period of time
7 as provided in Subsections B and C of this section.

8 F. A statement signed by a law enforcement officer,
9 pursuant to the provisions of Subsection B or C of this
10 section, shall be sworn to by the officer or shall contain a
11 declaration substantially to the effect: "I hereby declare
12 under penalty of perjury that the information given in this
13 statement is true and correct to the best of my knowledge.". A
14 law enforcement officer who signs a statement, knowing that the
15 statement is untrue in any material issue or matter, is guilty
16 of perjury as provided in Section 66-5-38 NMSA 1978. "

17 Section 4. EFFECTIVE DATE. --The effective date of the
18 provisions of this act is July 1, 2003.

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